IN THE HIGH COURT OF BOMBAY AT GOA

WRIT PETITION NO. 560 OF 2004.

Kum. Rujuta A. Borkar,
r/o Nandanvan Housing Society,
Gogol, Margao, Goa. .... Petitioner.

Versus

1. Goa University, through its
   Registrar, having office at
   Goa University, Taleigao
   Plateau, Goa 403 206.
2. The Vice Chancellor,
   Goa University, with office at
   Goa University, Taleigaon
   Plateau, Goa 403 206.
3. The State of Goa,
   Through the Chief Secretary,
   having office at Secretariat,
   Porvorim, Goa.
4. Shri Andrew S. Barreto,
   r/o Ward No. 7, Aster Apts.,
   1st Floor, Sirvodem, Navelim,
   Salcete, Goa. .... Respondents.

Shri Nitin Sardessai, Advocate for the Petitioner.

Mrs. A.A. Agni, Advocate for the Respondents No.1 and 2.

Mr. M.B. D'Costa, Advocate General with Mr. J.A. Lobo, Addl. Govt. Advocate for the Respondent No.3.

Mr. S. Dessai, Advocate for the Respondent No.4.

CORAM: A.P. LAVANDE &
N.A. BRITTO, JJ.

DATE: 3rd MAY, 2005.

ORAL JUDGMENT: (PER BRITTO, J.)

The petitioner, in this petition has taken exception to a part of Ordinance No.5.15(iv) of Goa University Ordinances on the ground that the same is arbitrary and therefore unconstitutional.

The said Ordinance reads as follows :-

" (iv) The revised marks obtained by a candidate after revaluation as accepted by the University shall be taken into account for the purpose of amendment of his/her result, if applicable, in accordance with the rules of the University in that behalf, but these marks shall not be taken into account for the purpose of award of scholarships, prizes, medals and/or the order of merit. "

As stated above, the challenge is to the underlined portion of the said Ordinance.

2. Some basic facts are required to be stated to dispose of this petition.

3. The petitioner appeared for final year B.A. Degree course in the year 2003-2004 with English as major subject and secured a third rank, obtaining 504 out of 700 marks. However, the petitioner being dissatisfied with the marks obtained by her, applied for re-verification and in the said re-verification obtained 541 out of 700 marks and

thereby the ranking of the petitioner went up from 3rd to 1st. By virtue of having secured the first rank, the petitioner was entitled to be awarded a gold medal and a certificate of merit and therefore the petitioner approached the University by her letter dated 1.11.04. However, the petitioner was informed by letter dated 19.11.04 that by virtue of the said Ordinance the petitioner would not be entitled to a change in merit position, thereby conveying to the petitioner that she would not be entitled to the prize and certificate of merit which she would otherwise have been entitled to.

4. The petitioner, therefore, has challenged the said part of the Ordinance on the ground that it is arbitrary, in that it recognizes the merit of the petitioner as having stood first but does not entitle the petitioner for consequential prize, certificate, etc.

5. We are entirely in agreement with the contention raised by the petitioner. In fact, the controversy raised by the petitioner in this petition is no longer res integra. A Single Judge of this Court in the case of ***Rajendrakumar Chandrakant Nadkarni v. Univelrsity of Bombay and another (A.I.R. 1991 Bombay 126)*** concerning a similar Ordinance of the University of Bombay held that if revaluation is permitted by the University and if ranking insofar as class is concerned is awarded to

candidates who get the benefit of a revaluation, there is no reason to restrict the result to the mere declaration of a class. This Court held that the full benefit to the vindicated candidate has to be awarded and his marks have to be taken into account for the purpose of scholarships, prizes, medals and/or the order of merit. We may only add that if the petitioner in the first declaration of results had obtained less marks, it was for no fault of the petitioner and the petitioner could not be penalised for the same to deprive the petitioner of the consequential benefits which the petitioner would be entitled to receive from the University after re-verification of marks. The Division Bench of this Court in the case of ***Yudhvir Singh s/o Col. B.S. Sisodiya v. Dr. Babasaheb Ambedkar Marathwada University & Others (1998 (2) Bom. C.R. 435)*** has approved the view held by the learned Single Judge in the case of Rajendrakumar Nadkarni (supra) and held that the University cannot deny the consequential benefits to the candidate for some other purpose.

6. Mrs. Agni, the learned counsel on behalf of Respondents No.1 and 2, informs the Court that the University has already taken steps to delete the underlined portion of the Ordinance and the matter has been approved by the Academic Council and the Executive Council and the matter is now pending before the Chancellor for approval in terms of Statute SA-2(6). Mrs. Agni has further submitted that the petitioner would be given the

prize/certificate she would be entitled to on account of change of her rank from 3rd to 1st. Although, in the light of the judgments to which we have referred to hereinabove, the said part of the Ordinance is liable to be struck down as arbitrary and unconstitutional in view of the submission made by Mrs. Agni, we accept her submission and dispose of the petition, with no order as to costs.

A. P. LAVANDE, J.

N. A. BRITTO, J.

sl.